

REMARKS

Claims 1-3, 5-13, 15-18, 20-23, 25-45 are all the claims pending in the application.

Claims 1, 3, 7, 9, 10, 12, 13, 17, 18, 22, 23, 26, 27, 29, 30 and 32-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tajime (U.S. Patent No. 6,915,018; hereinafter "Tajime"). Claim 2 is rejected under 35 U.S.C. § 103(a) over Tajime in view of Kim (U.S. Patent Publication No. 2002/0126752; hereinafter "Kim"). Claims 5, 6, 8, 11, 15, 16, 20, 21, 25, 26, 28, 31 and 36-45 are objected to but would be allowable if rewritten in independent form. Applicant submits the following in traversal.

Rejection of Claims 1, 3, 7, 9, 10, 12, 13, 17, 18, 22, 23, 26, 27, 29, 30 and 32-34 under § 103(a) over Tajime

Applicant submits that claim 1 remains patentable because Tajime fails to teach or suggest inter alia, an apparatus wherein:

the complexity estimation unit calculates complexity of a picture to be currently encoded, using complexity of decoded previous and current pictures output from the video decoding unit and complexity of an encoded previous picture output from the video encoding unit.

In the Office Action, the Examiner alleges that Tajime teaches a complexity measure computing means 101 in Fig. 1 which corresponds to the claimed complexity estimation unit. Applicant disagrees because Tajime makes no mention of the complexity measure computing means 101 calculating complexity of a picture to be currently encoded using complexity of decoded previous picture output from the video decoding unit, in combination with other elements of the claim.

Applicant requests the Examiner to specifically point out where Tajime teaches the use of the complexity of decoded previous picture in the complexity measure computing means 101.

Applicant also submits that even if the Examiner asserts that Tajime discloses computing the complexity measure in all pictures, Applicant emphasizes that claim 1 recites an apparatus wherein the complexity of a picture to be currently encoded is calculated using complexity of decoded previous and current pictures output from the video decoding unit. In other words, the mere calculation of the complexity measure in all pictures would not meet the features of claim 1.

Applicant submits that claim 1 is patentable because the Examiner has impermissibly combined the teachings of two separate embodiments. Applicant submits that such mixing and matching of components from different embodiments is impermissible because “[t]he elements must be arranged as required by the claim.” M.P.E.P. § 2131. The teachings of different embodiments in a single reference may not be combined absent a suggestion to do so. *In re Kramer*, 18 USPQ2d 1415, 1416 (Fed. Cir. 1991).

For at least the above reasons, claim 1 is patentable.

For reasons similar to those submitted for claim 1, claims 9, 12, 17, 22, 29 and 32-34 are patentable.

Claims 3 and 7, which depend from claim 1, claim 10, which depends from claim 9, claim 13, which depends from claim 12, claim 18, which depends from claim 17, claims 23 and 27, which depend from claim 22, and claim 30, which depends from claim 29, are patentable for at least the reasons submitted for their respective base claims.

RESPONSE UNDER 37 C.F.R. § 1.111
U.S. APPLN. NO.: 10/608,411

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Rejection of Claim 2 under § 103(a) over Tajime and Kim

Applicant submits that claim 2 is patentable over the combination of Tajime and Kim at least by virtue of its dependency from claim 1 and because Kim fails to make up for the deficiencies of Tajime.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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